

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

DAUMAN RECYCLING CO., INC.,
t/a A. B. DAUMAN INDUSTRIES
Employer¹

and

Case No. 29-RC-9352

LOCAL 116, PRODUCTION AND
MAINTENANCE EMPLOYEES UNION
Petitioner

and

LOCAL 132-98-102, NEW YORK-NEW JERSEY
REGIONAL JOINT BOARD, UNION OF
NEEDLETRADES, INDUSTRIAL AND TEXTILE
EMPLOYEES, AFL-CIO
Intervenor²

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Peter Pepper, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The undersigned Regional Director hereby corrects the Employer's name sua sponte, as it appears on Intervenor Exhibit No. 1.

² UNITE's status as Intervenor in this proceeding is based on its current collective bargaining agreement with the Employer herein, discussed below in more detail.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Dauman Recycling Co., Inc, t/a A.B. Dauman Industries, herein called the Employer or Dauman, is a New Jersey corporation with its principal office and place of business located at 33-37 Salt Meadow Road, Carteret, New Jersey, herein called the Carteret facility, and with additional facilities located in Jersey City, New Jersey; Cream Ridge, New Jersey; and Brooklyn, New York. The Employer is engaged in the business of recycling wood and manufacturing wood pallets. During the past year, which period represents its annual operations generally, the Employer purchases and receives at its Carteret facility, supplies and materials valued in excess of \$50,000 directly from points outside the State of New Jersey.

Based on the foregoing, and the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

4. Local 132-98-102, New York-New Jersey Regional Joint Board, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, herein called the Intervenor or UNITE, currently represents all production and maintenance employees employed by the Employer at its three New Jersey locations (Carteret, Jersey City and Cream Ridge).

³ The undersigned Regional Director hereby amends the transcript sua sponte as indicated in the Appendix attached hereto.

The Intervenor and the Employer are parties to a collective bargaining agreement, effective from July 1, 1998, to June 30, 2001 (Intervenor Exhibit No. 1, herein called the 1998-2001 contract). Specifically, the contract covers all production and maintenance employees, including mechanics, drivers, heavy machine operators and fork-lift operators at the Employer's facility located in Carteret, New Jersey and "any successor or accreted place of business," but excluding all office clerical employees, guards and supervisors as defined in the Act. The total number of bargaining unit employees at the Employer's three New Jersey locations ranges between the low eighties and high nineties, depending, in part, on the season.

As discussed in more detail below, the Employer began operating a facility located at 232 Gardner Avenue, Brooklyn, New York, herein called the Brooklyn facility, on approximately August 15, 1999. The Petitioner herein, Local 116, Production and Maintenance Employees Union, seeks to represent a unit of approximately eight (8) production and maintenance employees employed at the Employer's Brooklyn facility, as a separate, single-location bargaining unit. However, both the Intervenor and the Employer contend that the petitioned-for employees at the Brooklyn facility constitute an accretion to the existing, multi-location bargaining unit, and therefore that the 1998-2001 contract covering that unit bars an election at this time.

In support of its position, the Intervenor called three witnesses to testify: Anthony Fabrizio and Robert Chrisman, both identified as "principals" of the company; and Hector Ramos, a business agent for UNITE's New York-New Jersey Regional Joint Board. The Petitioner called two employees from the Brooklyn facility to testify: machine operator Uber Bautista and laborer Jose Salazar.

General Description of the Employer's Operations in New Jersey

The following description of the Employer's operations in New Jersey is based primarily on the testimony of Anthony Fabrizio. Except where indicated below, Fabrizio's testimony was not disputed.

Fabrizio testified that he, Robert Chrisman and David Damiano are the "principals" of the company. It appears that they work primarily in the Carteret facility.

The Employer is engaged in recycling wood, using wood byproducts to manufacture mulch, and manufacturing wood pallets. The Employer's facility in Carteret is the principal facility, employing approximately 75 to 80 employees, including laborers, machine operators and other classifications. After wood is brought to the Carteret facility for recycling,⁴ employees must remove any debris, such as pieces of metal, which could damage the Employer's grinding machine. The clean wood is then ground into wood chip in a grinding machine. The chip is then allowed to decompose. Eventually, the Employer turns it into mulch and sells the mulch.

The Employer's facility in Jersey City, which employs 6 or 7 employees, repairs and manufactures wood pallets. Fabrizio estimated that the Jersey City facility is approximately 15 or 20 miles away from the Carteret facility.

The Employer's facility in Cream Ridge serves as a storage facility for most of the year, employing only 1 or 2 employees. However, during the mulch season (mid-March to early July), the Cream Ridge facility employs up to 7 or 8 employees. Fabrizio estimated that Cream Ridge is 35 to 40 miles away from the Carteret facility.

⁴ While it is not entirely clear from the record, it appears that customers usually deliver the wood to the Employer's facility on their own. Nevertheless, Fabrizio also testified that in some circumstances (unspecified), the Employer's truck drivers may pick up wood from a customer's facility.

The Employer employs approximately 8 mechanics, welders and maintenance employees who repair and maintain the trucks and heavy equipment at all the Employer's facilities. They travel from Carteret to the other facilities. The Employer also employs approximately 30 truck drivers who travel to and from the various facilities, as described in more detail below.

The job classifications mentioned above, including laborers, machine operators, mechanics, maintenance employees and truck drivers, are all in the bargaining unit represented by the Intervenor. The terms of employment of unit employees at the Employer's three facilities in New Jersey are governed by the Intervenor's 1998-2001 contract.

The Employer's Brooklyn Facility

The Brooklyn recycling facility was previously owned and operated by Waste Management of New York. Its employees were represented by Local 116, the Petitioner herein.⁵ Waste Management contracted with Dauman to operate the facility, which Dauman began to do on or about August 15, 1999.⁶ It appears that Waste Management still owns the facility, and still provides the majority of customers who deliver wood to be recycled at the Brooklyn facility. Waste Management simply pays Dauman a certain amount per ton to process the wood recycling. There is one Waste Management employee at the Brooklyn facility, who operates the scale to determine how many tons of wood are brought in. Otherwise, the Brooklyn facility is operated by 7 or 8 Dauman employees. These employees perform some of the same work (removing debris from the

⁵ It is not clear from the record whether the bargaining unit of Waste Management employees represented by Local 116 was limited to the Brooklyn facility, or whether it also included other Waste Management facilities. Waste Management's contract with Local 116 was not introduced into evidence.

wood, then grinding it into wood chip) that is performed at the Carteret facility, although on a smaller scale. The Brooklyn facility is located approximately 30 to 35 miles from the Employer's Carteret facility.

When Dauman began operating the Brooklyn facility in August, it initially brought 5 employees there from the Carteret facility, including two experienced machine operators, Jouchim Valdez and Cuhuatemoc Cuenca, both of whom have been employed by Dauman for more than seven years.⁷ During the first few weeks of Dauman's operation of the Brooklyn facility (mid-August to early September), those 5 employees traveled each day from Carteret to Brooklyn and back. Both Fabrizio and Chrisman testified that they also offered employment to the former Waste Management employees, three of whom accepted. Thus, during the first few weeks, Dauman's workforce in Brooklyn consisted of 5 employees from Carteret and 3 employees formerly employed by Waste Management. Fabrizio testified that Dauman initially transferred the 5 employees from Carteret to ensure that the Brooklyn facility was running properly according to Dauman's standards. During those first few weeks, Fabrizio and Chrisman also spent most of their time at the Brooklyn facility, traveling from Carteret to Brooklyn every day.

Fabrizio and Chrisman testified that, after those initial few weeks, they transferred three of their employees from Brooklyn back to Carteret, so that the employees did not have to keep traveling back and forth. At that time, Chrisman hired three new employees

⁶ All dates hereinafter are in 1999, unless otherwise indicated.

⁷ It should be noted that the parties dispute whether Valdez and Cuenca are supervisors as defined in Section 2(11) of the Act. The Petitioner contends that Valdez and Cuenca are supervisors, whereas the Employer and the Intervenor dispute that contention, and have historically included Valdez and Cuenca in the bargaining unit covered by the Intervenor's 1998-2001 contract. In light of my dismissal of the instant

from the New York City area to replace them. Thus, since early September, Dauman's workforce in Brooklyn has consisted of Valdez and Cuenca, plus the three newly-hired employees, plus the three former Waste Management employees. Valdez and Cuenca continue to travel between the two facilities six days per week, punching their time cards in Carteret in the morning, then traveling to work in Brooklyn, and then traveling back to Carteret to punch out at the end of the day.

The Brooklyn facility accepts deliveries of wood, both from Waste Management's customers and from Dauman's own customers. Some Dauman customers who used to deliver wood for recycling at the Carteret facility, but who are located closer to Brooklyn, now deliver their wood to the Brooklyn facility. After the wood is weighed, the Brooklyn facility removes debris from the wood, and grinds it into wood chip. The wood chip is then taken by Dauman drivers to the Carteret facility, to be turned into mulch. If the Brooklyn facility finds in the deliveries any reusable wooden pallets, it also pulls them out and sends them to the Carteret facility for repair or remanufacture.

As noted above, Fabrizio and Chrisman, two of Dauman's principals who normally work at the Carteret facility, traveled to the Brooklyn facility every day during the first few weeks of Dauman's operation there in August and September. Fabrizio testified that they, along with David Damiano, continue to manage and supervise the Brooklyn facility, although they do not go there as frequently now since the operation is up and running. Specifically, Fabrizio goes to the Brooklyn facility in person once or twice per week. Chrisman, who sustained a back injury in September, has gone to the Brooklyn facility only 4 or 5 times since the injury, but plans to go again more frequently

petition, as discussed in more detail below, I need not resolve Valdez and Cuenca's status as employees or

when the injury heals.⁸ In any event, Fabrizio testified that he and Chrisman talk to Valdez in Brooklyn by telephone or walkie-talkie several times per day to resolve any questions or problems that arise.⁹ For example, when there was a fire in Brooklyn's grinding machine in mid-October, Valdez contacted Fabrizio and Chrisman, who decided to have all the wood from Brooklyn brought to the Carteret facility for grinding while the Brooklyn machine was being repaired. As another example, on one or two occasions when Valdez notified Fabrizio that a Brooklyn employee would be absent the next day, Fabrizio decided to send an employee from Carteret as a replacement. On Fridays, Valdez calls Fabrizio or Chrisman to find out who should be assigned to work overtime the following day (Saturday). Fabrizio testified that all operational decisions are made by himself, Chrisman or Damiano in Carteret. Although one of Petitioner's witnesses, Jose Salazar, testified that Valdez is the only "supervisor" on site every day in Brooklyn, Salazar also conceded that Valdez contacts Fabrizio or Chrisman in Carteret whenever there is a problem. Fabrizio also testified that if attendance problems or other misconduct arose at the Brooklyn facility, he or Chrisman would investigate and decide whether to take disciplinary action. However, as of the time of the hearing, there had been no disciplinary problems at the Brooklyn facility.

supervisors.

⁸ Fabrizio mentioned that two salaried, non-union supervisors from the Carteret facility, Dave D'Andrea and Pedro Pena, also travel to Brooklyn to supervise the facility there on occasion. However, there was no specific testimony regarding their duties.

⁹ Similarly, Fabrizio testified that the principals in Carteret supervise the pallet operation in Jersey City, even though they are not physically present there on a daily basis. There is an experienced employee who "runs" the pallet operation there, but who is not considered supervisory and who is included in the bargaining unit represented by UNITE. UNITE business agent Hector Ramos testified that, to his knowledge, Fabrizio and Chrisman essentially supervise the Jersey City location the same way they supervise the Brooklyn facility (i.e., via telephone contact with the lead person).

Dauman employs approximately 30 truck drivers who drive trucks to and from the Employer's facilities, and who are included in the bargaining unit represented by the Intervenor. Most of the drivers' interaction with the Brooklyn facility involves picking up wood chip there, and bringing it to the Carteret facility to be turned into mulch. Fabrizio testified that the drivers pick up 3 or more truckloads of wood chip from Brooklyn per day, Mondays through Fridays, and anywhere from 2 to 12 loads on Saturdays. (When necessary, the Employer employs 4 four drivers who transport up to 3 loads each on Saturdays, when there is less traffic on the roads between Brooklyn and Carteret.) Petitioner witness Salazar confirmed that drivers employed by Dauman come from Carteret to pick up wood chip from Brooklyn "several" times per day. Fabrizio further testified that Brooklyn employees have frequent interaction with the drivers, because Valdez must tell the drivers where to park their truck, and Brooklyn employees must load the wood chip into the drivers' trucks, using a loading machine. During the loading process, which takes at least 20 minutes for each truck, the driver and the loader must work together, to make sure that the truck is loaded properly and that the truck's aluminum floor is not damaged.

In addition to transporting wood chip from Brooklyn to Carteret, the drivers employed by Dauman also deliver wood to the Brooklyn facility on occasion, when the customers themselves do not deliver their own wood there. Furthermore, drivers employed by Dauman must also take dumpsters full of metal and other debris (that has been separated from the wood before grinding) away from the Brooklyn facility. In addition, drivers employed by Dauman also take wood stumps that are too big for the grinding machine in Brooklyn, to be ground in Carteret. It is not clear from the record

how often these other trucking functions (delivering wood, taking away debris, transporting stumps) take place to and from the Brooklyn facility. However, Fabrizio testified that whenever Valdez notifies him that the Brooklyn facility has "an overabundance of stumps" or "too much garbage," Fabrizio sends the trucks from New Jersey to take it away. Finally, Fabrizio also noted that a driver brings employees' paychecks from Carteret to Brooklyn on a weekly basis.

It appears from the record that most of Dauman's trucks work from Dauman's New Jersey facilities. However, Fabrizio testified that there is one driver who lives in Brooklyn, and who now leaves his truck at the Brooklyn site overnight. Previously, this driver had to commute from his home in Brooklyn to the Employer's Carteret facility to punch in and get his truck in the morning, then turn around and head back to Brooklyn to pick up garbage dumpsters in his "roll-off" truck 3 or 4 times per week. Now, this driver is allowed to leave the truck in Brooklyn overnight. When he arrives at the Brooklyn facility in the morning, he telephones someone in Carteret to "punch him in," and he starts driving his pick-up routes immediately from Brooklyn.

Whenever a mechanical problem arises in any of the facilities, Fabrizio and Chrisman decide whether to send one of their own employees, or whether to contract with an outside vendor to make the repair. The mechanics, welders and maintenance employees employed by Dauman, who are in the bargaining unit represented by UNITE, repair and maintain Dauman's trucks and heavy equipment. When necessary, they travel from Carteret to the other facilities, including Brooklyn. For example, a mechanic may travel from Carteret to Jersey City to repair a forklift there. When a fire occurred in Brooklyn's grinding machine in mid-October, the Employer sent a mechanic from

Carteret to repair the machine. (In the meantime, all of the wood at the Brooklyn facility was transported to Carteret for grinding.) Fabrizio testified that the mechanics interact with the employees in Brooklyn, such as the machine operators, because they need to discuss what the problem is before they can fix it. Fabrizio estimated that repair and maintenance employees from Carteret travel to the Brooklyn facility approximately two or three times per week.

As mentioned above, most of Fabrizio's testimony regarding the Employer's operation in Brooklyn was not disputed or contradicted by other witnesses. However, there was contradictory and somewhat confused testimony regarding the terms and conditions of employment for Dauman's Brooklyn employees. On one hand, Fabrizio testified that, since it was the Employer's position that the Brooklyn employees would be covered under the Intervenor's 1998-2001 contract as part of the existing multi-location bargaining unit, the Employer has paid the same wages and benefits to employees in Brooklyn as it pays to unit employees at the three New Jersey facilities. As a specific example, Fabrizio explained that laborers who used to work for Waste Management for \$6 per hour were raised under the Intervenor's contract to \$7 per hour. Petitioner witness Salazar, a laborer formerly employed by Waste Management, conceded on cross examination that his wages increased from \$6 to \$7 when he became employed by Dauman. However, although Fabrizio testified that machine operators formerly employed by Waste Management also received a \$1 per hour increase, Petitioner witness Uber Bautista, a machine operator, denied receiving an increase from Dauman. Specifically, Bautista testified that he used to earn \$11.40 per hour under Waste Management, and that he still earns \$11.40 under Dauman. (No paystubs or other pay

records were introduced into evidence.) Bautista also denied receiving the health benefits required by UNITE's contract, although Bautista added that he did not want those benefits, which he considered inferior to the health benefits he previously received under the contract between Waste Management and Local 116. Later, under questioning by the hearing officer, Bautista admitted that he does not know whether Dauman makes any contributions on his behalf for health benefits.¹⁰ Salazar's testimony regarding benefits was somewhat vague. Although Salazar initially stated that his benefits were "the same" as before because he still belongs to Local 116, he later admitted that he has not used any of his benefits since working for Dauman because "it has not been necessary." In short, on this record, it cannot be determined with certainty whether Dauman has actually given the Brooklyn employees the same terms and conditions of employment as employees at its other three facilities covered by the UNITE contract.

Discussion

In determining appropriate bargaining units and related accretion issues, the Board weighs such factors as bargaining history, functional integration of operations, similarity of duties and skills, interchange of employees, common supervision and working conditions. The Board follows a restrictive policy in accreting unrepresented employees to an existing bargaining unit, since it precludes those employees from exercising their right to free choice regarding union representation. Towne Ford Sales, 270 NLRB 311 (1984). Nevertheless, where a relatively small group of employees at a

¹⁰ Bautista also testified that UNITE business agent Ramos stated that his benefits could not "change" until he signed a UNITE membership card (Transcript p. 112). Similarly, Ramos himself testified that he told former Waste Management employees that they should sign UNITE membership cards in order to start a 90-day waiting period for their medical benefits (Transcript p. 144). It should be noted that it is unlawful for employees' employment benefits to be conditioned on their becoming union

new facility is sufficiently integrated into the Employer's existing operation that the group would not separately constitute an appropriate bargaining unit, or that the group has lost its separate identity, an accretion may be found. Passavant Health Center, 313 NLRB 1216 (1994); Local 144, Hotel, Hospital, Nursing Home & Allied Services Union v. NLRB, 9 F.3d 218, 223, 144 LRRM 2617, 2620 (2nd Cir. 1993).

In the instant case, I conclude that the 8 employees employed by Dauman in Brooklyn are sufficiently integrated into the Employer's existing multi-location operation that an accretion finding is warranted. Although there is a significant geographical distance between the Brooklyn facility and the Employer's principal facility in Carteret, the record clearly indicates a close functional and supervisory connection between the two. Specifically, the record indicates that the small group of laborers and machine operators in Brooklyn perform the same work in the same job classifications as employees perform in the Carteret facility, albeit on a smaller scale. The Employer has transferred employees from Carteret to Brooklyn on a temporary basis, initially to get the Brooklyn operation "up and running" in August, and also once or twice since then to replace absent employees in Brooklyn. Furthermore, two employees from Carteret continue to work in Brooklyn every day. In terms of functional integration, the record indicates that all the wood chip ground in Brooklyn is transported, by Dauman drivers, on a daily basis, to the Carteret facility to be turned into mulch. In some instances, such as when the Brooklyn grinder needed repair, the wood delivered to Brooklyn is transported directly to Carteret for grinding. Employees in Brooklyn have daily contact with the drivers from New Jersey, and frequent contact with

members. However, this testimony raises issues that are better resolved in an unfair labor practice

the mechanics and maintenance employees from New Jersey. One of the drivers who is considered a Carteret employee and whose time card is kept in Carteret actually leaves his truck at the Brooklyn facility overnight, since he must take dumpsters from the Brooklyn facility three or four times per week. Those employees (drivers, mechanics, maintenance) are all included in the multi-location bargaining unit represented by the Intervenor.

In addition, the record indicates that the facilities have common supervision, and a highly centralized control of labor relations from Carteret. Although Fabrizio and Chrisman no longer travel to the Brooklyn facility every day, they are in frequent contact with machine operator Valdez there, and communicate instructions through him. The record clearly indicates that most, if not all, supervisory decisions are made by Fabrizio and Chrisman in Carteret, including decisions to hire and transfer employees; negotiate wage rates; authorize overtime; assign substitute employees to fill absences in Brooklyn; and assign truckers and mechanics to the various facilities when needed.

I am aware that some Dauman employees in Brooklyn were previously represented by the Petitioner when they were employed by Waste Management, and that they do not share a common bargaining history with Dauman's employees in the pre-existing unit represented by the Intervenor. I am also aware that the record is ambiguous, at best, in establishing that Dauman has applied the same terms and conditions of employment to Brooklyn employees as the other employees. Nevertheless, given the evidence of interchange between Carteret and Brooklyn employees, the similarity of their job classifications (for laborers and machine operators), the functional integration of their

proceeding, and need not be addressed in the context of the instant representation matter.

work, the Brooklyn employees' frequent contact with the drivers, mechanics and maintenance employees represented by the Intervenor, the small number of Brooklyn employees compared to the overall unit, and their common, centralized supervision, I find that the Brooklyn employees share a sufficiently strong community of interest with the existing unit that they would not constitute a separate, appropriate bargaining unit. Rather, based on all the foregoing, I find that Dauman's employees at the Brooklyn facility constitute an accretion to the overall unit and therefore, the continued processing of the instant petition is no longer warranted.

In light of all of the above, I therefore find that the 1998-2001 collective bargaining agreement between the Employer and the Intervenor bars the processing of the instant petition, and requires dismissal thereof.

Accordingly, it is hereby ordered that the petition in Case No. 29-RC-9352 be dismissed.¹¹

¹¹ In light of the dismissal of the instant petition, it is unnecessary to resolve a disputed issue of whether two individuals employed at the Employer's Brooklyn facility (Jouchim Valdez and Cuhuatemoc Cuenca) are supervisors as defined in Section 2(11) of the Act.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by November 29, 1999.

Dated at Brooklyn, New York, this 15th day of November, 1999.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

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440-6750-3350-3300

APPENDIX

The transcript is hereby amended as follows:

Page 6, line 23: "UNITE" rather than "United".

Page 7, line 3: "accreted" rather than "increted".

Page 8, line 22: "commerce" rather than "common".

Page 9, line 7: "principal" rather than "principle".

Page 10, line 2 et seq.: All references to "Section 25" should be punctuated as "Section 2(5)".

Page 13, line 22 et seq.: All references to Anthony Fabrizio, Robert Chrisman and/or David Damiano being the "principles" of the company should be spelled "principals".

Page 14, line 8: "byproduct" rather than "buy product".

Page 17, line 12 et seq.: All references to "tonage" should be spelled "tonnage".

Page 24, line 7: "problem" rather than "probably".

Page 47, line 6: "UNITE" rather than "United".

Page 159, line 8: "full-time" rather than "whole".